

**U.S. District Court
District of Delaware (Wilmington)
CIVIL DOCKET FOR CASE #: 1:21-mc-00440-MN-CJB**

Google LLC v. BP Funding Trust

Assigned to: Judge Maryellen Noreika

Referred to: Judge Christopher J. Burke

Related Cases: 1:21-mc-00419-MN-CJB

1:21-mc-00443-MN-CJB

Case in other court: USDC/WDT, 6:20-cv-571(ADA)

USDC/WDT, 6:20-cv-572(ADA)

USDC/WDT, 6:20-cv-573(ADA)

USDC/WDT, 6:20-cv-575(ADA)

USDC/WDT, 6:20-cv-576(ADA)

USDC/WDT, 6:20-cv-579 (ADA)

USDC/WDT, 6:20-cv-580 (ADA)

USDC/WDT, 6:20-cv-583 (ADA)

USDC/WDT, 6:20-cv-584 (ADA)

USDC/WDT, 6:20-cv-585 (ADA)

Cause: Motion to Compel

Petitioner

Google LLC

represented by **Jack B. Blumenfeld**
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V.

Respondent**BP Funding Trust**represented by **Sean J. Bellew**

Bellew LLC

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| Date Filed | # | Docket Text |
|------------|----------|---|
| 10/15/2021 | <u>1</u> | MOTION to Compel BP Funding Trust to Comply with Subpoenas on an Expedited Basis – filed by Google LLC. (Attachments: # <u>1</u> Exhibit 1–12, # <u>2</u> Civil Cover Sheet)(myr) (Entered: 10/15/2021) |
| 10/15/2021 | <u>2</u> | Disclosure Statement pursuant to Rule 7.1: identifying Corporate Parent Alphabet Inc., Corporate Parent XXVI Holdings Inc. for Google LLC filed by Google LLC. (myr) (Entered: 10/15/2021) |
| 10/15/2021 | <u>1</u> | Remark:Case Submitted for Routine Judicial Assignment. (myr) (Entered: 10/15/2021) |
| 10/15/2021 | <u>3</u> | AFFIDAVIT of Service for Motion to Compel BP Funding Trust to Comply with Subpoenas on an Expedited Basis served on BP Funding Trust on October 15, 2021, filed by Google LLC. (Egan, Brian) (Entered: 10/15/2021) |
| 10/18/2021 | <u>4</u> | ORDER re (2 in 1:21-mc-00443-UNA) MOTION to Compel filed by Google LLC, (1 in 1:21-mc-00440-UNA) MOTION to Compel filed by Google LLC, (1 in 1:21-mc-00419-MN): The respondents shall file a response to the motion by NOON on Thursday, October 21, 2021, and the petitioner shall serve a copy of this Order on the respondents and file a certificate of service by the close of business TODAY. (Response due 10/21/2021). Signed by Judge Maryellen Noreika on 10/18/2021. Associated Cases: 1:21-mc-00419-MN, 1:21-mc-00440-UNA, 1:21-mc-00443-UNA(mdb) (Entered: 10/18/2021) |
| 10/18/2021 | <u>5</u> | CERTIFICATE OF SERVICE of Court's October 18, 2021 Order by Google LLC (Egan, Brian) (Entered: 10/18/2021) |
| 10/19/2021 | <u>6</u> | MOTION for Pro Hac Vice Appearance of Attorney Matthew S. Warren, Jennifer A. Kash, Erika Warren, and Francesca Miki Shima Germinario – filed by Google LLC. (Egan, Brian) (Entered: 10/19/2021) |

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| 10/20/2021 | <u>1</u> | Case Assigned to Judge Maryellen Noreika. Please include the initials of the Judge (MN) after the case number on all documents filed. (nms) (Entered: 10/20/2021) |
| 10/20/2021 | <u>1</u> | SO ORDERED re <u>6</u> MOTION for Pro Hac Vice Appearance of Attorney Matthew S. Warren, Jennifer A. Kash, Erika Warren, and Francesca Miki Shima Germinario filed by Google LLC. ORDERED by Judge Maryellen Noreika on 10/20/2021. (dlw) (Entered: 10/20/2021) |
| 10/20/2021 | <u>7</u> | NOTICE of Appearance by Sean J. Bellew on behalf of BP Funding Trust (Bellew, Sean) (Entered: 10/20/2021) |
| 10/20/2021 | <u>8</u> | MOTION for Pro Hac Vice Appearance of Attorney Morgan E. Pietz – filed by BP Funding Trust. (Bellew, Sean) (Entered: 10/20/2021) |
| 10/20/2021 | <u>9</u> | MOTION for Pro Hac Vice Appearance of Attorney Robert M. Millimet – filed by BP Funding Trust. (Bellew, Sean) (Entered: 10/20/2021) |
| 10/20/2021 | <u>1</u> | SO ORDERED re <u>8</u> MOTION for Pro Hac Vice Appearance of Attorney Morgan E. Pietz, <u>9</u> MOTION for Pro Hac Vice Appearance of Attorney Robert M. Millimet filed by BP Funding Trust. ORDERED by Judge Maryellen Noreika on 10/20/2021. (dlw) (Entered: 10/20/2021) |
| 10/21/2021 | <u>1</u> | Pro Hac Vice Attorney Francesca Miki Shima Germinario for Google LLC added for electronic noticing. Pursuant to Local Rule 83.5 (d)., Delaware counsel shall be the registered users of CM/ECF and shall be required to file all papers. (twk) (Entered: 10/21/2021) |
| 10/21/2021 | <u>1</u> | Pro Hac Vice Attorneys Jennifer A. Kash, Matthew S. Warren, Erika Warren for Google LLC added for electronic noticing. Pursuant to Local Rule 83.5 (d)., Delaware counsel shall be the registered users of CM/ECF and shall be required to file all papers. (twk) (Entered: 10/21/2021) |
| 10/21/2021 | <u>10</u> | MOTION to Transfer Case to the United States District Court for the Western District of Texas – filed by BP Funding Trust, WSOU Investments, LLC d/b/a Brazos Licensing and Development. (Attachments: # <u>1</u> Text of Proposed Order)(Felice, David) (Entered: 10/21/2021) |
| 10/21/2021 | <u>11</u> | RESPONSE to Motion re <u>1</u> MOTION to Compel // Terrier SSC, LLC and BP Funding Trust's Omnibus Opposition to Google's Motion to Compel filed by BP Funding Trust. (Bellew, Sean) Modified on 10/21/2021 (dlw). (Entered: 10/21/2021) |
| 10/21/2021 | <u>12</u> | DECLARATION of Travis Richins re <u>11</u> Response to Motion, <u>10</u> MOTION to Transfer Case to the United States District Court for the Western District of Texas by BP Funding Trust, WSOU Investments, LLC d/b/a Brazos Licensing and Development. (Felice, David) Modified on 10/21/2021 (dlw). (Entered: 10/21/2021) |
| 10/21/2021 | <u>13</u> | DECLARATION of Morgan E. Pietz re <u>11</u> Response to Motion by BP Funding Trust. (Attachments: # <u>1</u> Exhibit A, # <u>2</u> Exhibit B)(Bellew, Sean) Modified on 10/21/2021 (dlw). (Entered: 10/21/2021) |
| 10/22/2021 | <u>14</u> | BRIEF (Combined Answering and Reply) re <u>10</u> MOTION to Transfer Case to the United States District Court for the Western District of Texas, <u>1</u> MOTION to Compel filed by Google LLC.Reply Brief due date per Local Rules is 10/29/2021. (Attachments: # <u>1</u> Exhibits A–B)(Egan, Brian) (Entered: 10/22/2021) |
| 10/29/2021 | <u>15</u> | REPLY BRIEF re <u>10</u> MOTION to Transfer Case to the United States District Court for the Western District of Texas filed by BP Funding Trust. (Bellew, Sean) (Entered: 10/29/2021) |
| 11/01/2021 | <u>16</u> | REQUEST for Oral Argument by Google LLC re (10 in 1:21–mc–00440–MN) MOTION to Transfer Case to the United States District Court for the Western District of Texas, (1 in 1:21–mc–00440–MN) MOTION to Compel, (10 in 1:21–mc–00419–MN) MOTION to Transfer Case to the United States District Court for the Western District of Texas, (1 in 1:21–mc–00419–MN) MOTION to Compel. (Egan, Brian) (Entered: 11/01/2021) |

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| 11/10/2021 | 17 | ORAL ORDER REFERRING MISCELLANEOUS CASE to Magistrate Judge Christopher J. Burke – IT IS HEREBY ORDERED that this miscellaneous case is referred to Magistrate Judge Christopher J. Burke to hear and resolve all matters, including the pending motions, subject to 28 U.S.C. § 636(b) and any further Order of the Court. All subsequent filings in this action shall be captioned as follows: Civil Action No. 21–mc–440–MN–CJB. ORDERED by Judge Maryellen Noreika on 11/10/2021. Motions referred to Christopher J. Burke.(dlw) (Entered: 11/10/2021) |
| 11/17/2021 | 18 | ORAL ORDER: The Court, having reviewed the pending motions, (D.I. 1, D.I. 10), hereby ORDERS as follows: (1) The Court will hear argument on the motions via teleconference on December 6, 2021 at 12:00 p.m.; (2) By no later than December 1, 2021, the parties shall jointly provide the Court's Courtroom Deputy, Ms. Benyo, with a dial-in number via e-mail to use for the call; and (3) The Court may choose to resolve the motions prior to the telephone conference and will, in that event, cancel the conference. Ordered by Judge Christopher J. Burke on 11/17/2021. Associated Cases: 1:21–mc–00419–MN–CJB, 1:21–mc–00440–MN–CJB(dlb) (Entered: 11/17/2021) |
| 12/01/2021 | 19 | MOTION for Pro Hac Vice Appearance of Attorney Travis Richins – filed by WSOU Investments, LLC d/b/a Brazos Licensing and Development. Motions referred to Christopher J. Burke.(Felice, David) (Entered: 12/01/2021) |
| 12/03/2021 | I | SO ORDERED D.I. (19 in 1:21–mc–00419–MN–CJB) MOTION for Pro Hac Vice Appearance of Attorney Travis Richins filed by WSOU Investments, LLC d/b/a Brazos Licensing and Development, (19 in 1:21–mc–00440–MN–CJB) MOTION for Pro Hac Vice Appearance of Attorney Travis Richins filed by WSOU Investments, LLC d/b/a Brazos Licensing and Development. Ordered by Judge Christopher J. Burke on 12/3/2021. Associated Cases: 1:21–mc–00419–MN–CJB, 1:21–mc–00440–MN–CJB(dlb) (Entered: 12/03/2021) |
| 12/06/2021 | I | Minute Entry for proceedings held before Judge Christopher J. Burke – Motion Hearing held on 12/6/2021 regarding D.I. (10 in 1:21–mc–00440–MN–CJB) MOTION to Transfer Case to the United States District Court for the Western District of Texas filed by BP Funding Trust, WSOU Investments, LLC d/b/a Brazos Licensing and Development, D.I. (1 in 1:21–mc–00440–MN–CJB) MOTION to Compel filed by Google LLC, D.I. (10 in 1:21–mc–00419–MN–CJB) MOTION to Transfer Case to the United States District Court for the Western District of Texas filed by WSOU Investments, LLC d/b/a Brazos Licensing and Development, Terrier SSC, LLC, D.I. (1 in 1:21–mc–00419–MN–CJB) MOTION to Compel filed by Google LLC. After hearing from the parties regarding the motions, (D.I. 1; D.I. 10), the Court took the motions under advisement. (Court Reporter Deanna Warner, Hawkins Reporting. Clerk: E. Bryant–Alvarez) APPEARANCES: B. Egan and J. Kash for Petitioner; S. Bellew, R. Millimet and M. Pietz for Respondents; D. Felice and T. Richins for WSOU Investments. Associated Cases: 1:21–mc–00419–MN–CJB, 1:21–mc–00440–MN–CJB(mlc) (Entered: 12/06/2021) |
| 12/06/2021 | 20 | ORAL ORDER: The Court, having reviewed Petitioner Google LLC's motions to compel responses to its third–party subpoenas issued to Respondents Terrier SSC, LLC and BP Funding Trust (the "motions to compel"), (D.I. 1), as well as Respondents' motions to transfer the motions to compel (the "motions to transfer"), (D.I. 10), hereby ORDERS that the motions to transfer are GRANTED. Federal Rule of Civil Procedure 45(f) states that "[w]hen the court where compliance is required did not issue the subpoena, it may transfer a motion under this rule to the issuing court if the person subject to the subpoena consents or if the court finds exceptional circumstances." Fed. R. Civ. P. 45. Here, both Respondents consent to the transfer of the motions to compel to the United States District Court for the Western District of Texas ("Western District of Texas"). Beyond that, it makes good sense for the Western District of Texas to resolve these motions to compel, because that Court: (1) is the issuing court regarding the challenged subpoenas, (D.I. 1, exs. 1–2); and (2) has already addressed — in a set of cases that are related to the instant litigations — the extent to which certain of the documents at issue in these motions to compel should be produced (in light of standing and relevance concerns), (C.A. No. 21–419, D.I. 13, ex. A at 2–3; D.I. 12 at 4–5). Cf. Fed. |

R. Civ. P Rule 45 advisory committee's notes (2013 amendments) ("[T]ransfer may be warranted in order to avoid disrupting the issuing court's management of the underlying litigation, as when that court has already ruled on issues presented by the motion or the same issues are likely to arise in discovery in many districts."); N. Atl. Operating Co., Inc. v. Dunhuang Grp., C.A. No. 18-MC-154-LPS, 2018 WL 3381300, at *2 (D. Del. July 11, 2018) (finding that extraordinary circumstances existed in the case "such that transfer [of a motion to compel wa]s warranted so as to not disrupt the issuing court's management of the [u]nderyling [a]ction" and finding that transfer was "likewise appropriate" and would "promote judicial economy and avoid the risk of inconsistent rulings" because the issuing court "[wa]s better suited to decide whether the subpoena should be enforced" in that the issuing court, inter alia, had already ruled on related issues). In light of the Court's ruling, it need not address the motions to compel further, as they will be addressed by the Western District of Texas. Ordered by Judge Christopher J. Burke on 12/6/2021. Associated Cases: 1:21-mc-00419-MN-CJB, 1:21-mc-00440-MN-CJB(mlc) (Entered: 12/06/2021)

12/07/2021

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Letter to The Honorable Christopher J. Burke from Brian P. Egan regarding transfer of cases – re (20 in 1:21-mc-00440-MN-CJB, 20 in 1:21-mc-00419-MN-CJB) Oral Order,,,,,,,,, (Egan, Brian) (Entered: 12/07/2021)

12/07/2021

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Case electronically transferred to the United States District Court for the Western District of Texas. (dlw) (Entered: 12/07/2021)